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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,439	09/22/2003	Ernesto Cohen	28,437-A	8312
7590	06/23/2005		EXAMINER	
Charles E. Temko 22 Marion Road Westport, CT 06880			NELSON JR, MILTON	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,439

Applicant(s)

COHEN, ERNESTO

Examiner

Milton Nelson, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 9, it is unclear if Applicant intends to positively claim the combination of a cover and a sofa, or the subcombination of a cover for use with a sofa. Line 1 appears to set forth the subcombination. Note the recitation of a "unitary cover for upholstered chairs and sofas". Lines 4 to 5 appear to set forth the combination. Note the recitation of the cover panels "overlying a rectangular cushion forming part of said sofa". Clarification in the claim language is required.

Specification

The disclosure is objected to because it appears that Applicant has provided two different abstracts with one of the abstracts being inappropriate for the instant application. A first abstract was filed on September 22, 2003. This abstract appears to be appropriate for the instant application. A second abstract was filed on January 2, 2004, and appears to be inappropriate for the instant application. The second abstract is directed to a carousel type display, and includes the apparent attorney docket number

28,409-a. It appears that this is directed to another application for the attorney of record. Applicant should cancel the one of the abstracts by amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 9, as is best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Cook (3371957). Note that the hollow shell (see any of the figures) is made of resilient fabric (column 1, lines 55-58). Also note the elastic means (d), and rear panel having first and second parts (note at a²) disposed in separate planes (note the nearly parallel planes). Note that the first and second parts disposed in separate planes at a mutual angle inherently provides a degree of excess material in an area at the rear of the cushion, wherein the material comprising the first and second parts is normally concealed from view (in the crevice between the backrest and seat portions). The nature of the resilient material forming the excess material moves over the cushion when sat upon by a user. The resilient nature of the material necessarily contracts when the cushion is vacated.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (3371957) in view of Riley et al (5722723). Cook shows all claimed features of the instant invention with the exception of a resilient-elongated tube positioned over the excess material. Note the discussion of Cook in the above rejection under 35 U.S.C. 102. Riley et al conventionally teaches providing a resilient-elongated tube (40, as shown in Figures 8 and 9) as positioned over excess material formed by first and second parts (note rear panel of the seat cushion cover 12 in Figure 1). It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding the tube member (40), and positioning it over the excess material formed by the first and second parts. This modification stabilizes the cover of Cook by pressing on the excess material, thereby reducing movement of the cover. This inherently distributes stresses over the surface of the cover, including the width, to provide a contractive force through the first and second parts.

Response to Amendment/Arguments

Applicant's responses have been fully considered. Applicant has cancelled all claims, and has added new claims 9 and 10. Applicant's arguments regarding application of the prior art are not persuasive. Applicant argues that the first and second parts (note at a²) do not move. These parts would necessarily have some degree of movement when a force (such as that provided by a person sitting on the cushion) is applied to the resilient material of the cover. The first and second parts are not fastened or adhered rigidly into the crevice between the backrest and the seat portion. While the first and second parts would not leave the crevice based on a person sitting on the cushion, slight movement of the parts can be expected. Applicant argues that the parts are not in separate planes disposed at a mutual angle. Figure 3 clearly shows the parts extending in separate, nearly parallel planes. Note that extension of each plane upward from the crevice would cause the planes to cross each other at some point. These planes are necessarily mutually angled. Applicant argues that the Examiner does not understand or fully appreciate the Applicant's invention. The Examiner does understand and appreciate the invention. Applicant argues that the structure of Riley et al is expensive and involved. This however has no bearing on the merits of applying Riley et al to the claims. Applicant argues that the instant invention does not rely upon the crevice existing between the seat back and seat cushion, however there is nothing in the claim language that bars use of such a feature in application of the prior art to the instant claims. Clearly a force placed onto the resilient material of Cook will cause some movement in the material. When that force is removed, the material will move back towards its original, unloaded state. In response

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to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Motivation to combine the prior art references (Cook and Riley et al) is set forth in the appropriate rejection above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

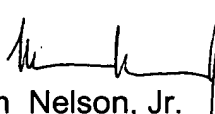
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 5712726861. The examiner can normally be reached on Monday-Wednesday, and alternate Fridays 5:30-3:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
June 21, 2005